

**ELIZABETH M. BARROS**  
California Bar No. 227629  
**FEDERAL DEFENDERS OF SAN DIEGO, INC.**  
225 Broadway, Suite 900  
San Diego, California 92101-5030  
Telephone: (619) 234-8467 ext. 3701

## Attorneys for Mr. Aramburo

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
**(HONORABLE THOMAS J. WHELAN)**

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, AND  
STEVEN DE SALVO, ASSISTANT UNITED STATES ATTORNEY.

PLEASE TAKE NOTICE that on June 23, 2008 at 2:00 p.m., or as soon thereafter as counsel may be heard, Defendant Armando Aramburo-Uribe, by and through his attorneys, Elizabeth M. Barros and Federal Defenders of San Diego, Inc., will ask this Court to enter an order granting the following motions.

27 //

28 //

## **MOTIONS**

Defendant Armando Aramburo-Uribe, by and through his attorneys, Elizabeth M. Barros and Federal Defenders of San Diego, Inc., moves this Court pursuant to the United States Constitution, the Federal Rules of Criminal Procedure, and all other applicable statutes, case law, and local rules for an order to:

- (1) Compel Discovery/ Preserve Evidence;
- (2) Suppress Evidence Under the Fourth Amendment;
- (3) Suppress Statements Pursuant to the Fifth Amendment and Compel an Evidentiary Hearing; and
- (4) Grant Leave to File Further Motions.

This motion is based upon the instant motions and notice of motions, the attached statement of facts and memorandum of points and authorities, the files and records in the above-captioned matter, and any and all other materials that may come to this Court's attention prior to or during the hearing of these motions.

Respectfully submitted,

Dated: May 19, 2008

/s/ Elizabeth M. Barros  
**ELIZABETH M. BARROS**  
Federal Defenders of San Diego, Inc.  
Attorneys for Armando Aramburo-Uribe

1 **ELIZABETH M. BARROS**  
2 California Bar No. 227629  
3 **FEDERAL DEFENDERS OF SAN DIEGO, INC.**  
4 225 Broadway, Suite 900  
5 San Diego, California 92101-5030  
6 Telephone: (619) 234-8467 ext. 3701

7  
8  
9  
10  
11 Attorneys for Armando Aramburo-Uribe

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
**(HONORABLE THOMAS J. WHELAN)**

29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000  
1001  
1002  
1003  
1004  
1005  
1006  
1007  
1008  
1009  
1009  
1010  
1011  
1012  
1013  
1014  
1015  
1016  
1017  
1018  
1019  
1019  
1020  
1021  
1022  
1023  
1024  
1025  
1026  
1027  
1028  
1029  
1029  
1030  
1031  
1032  
1033  
1034  
1035  
1036  
1037  
1038  
1039  
1039  
1040  
1041  
1042  
1043  
1044  
1045  
1046  
1047  
1048  
1049  
1049  
1050  
1051  
1052  
1053  
1054  
1055  
1056  
1057  
1058  
1059  
1059  
1060  
1061  
1062  
1063  
1064  
1065  
1066  
1067  
1068  
1069  
1069  
1070  
1071  
1072  
1073  
1074  
1075  
1076  
1077  
1078  
1079  
1079  
1080  
1081  
1082  
1083  
1084  
1085  
1086  
1087  
1088  
1089  
1089  
1090  
1091  
1092  
1093  
1094  
1095  
1096  
1097  
1098  
1099  
1099  
1100  
1101  
1102  
1103  
1104  
1105  
1106  
1107  
1108  
1109  
1109  
1110  
1111  
1112  
1113  
1114  
1115  
1116  
1117  
1118  
1119  
1119  
1120  
1121  
1122  
1123  
1124  
1125  
1126  
1127  
1128  
1129  
1129  
1130  
1131  
1132  
1133  
1134  
1135  
1136  
1137  
1138  
1139  
1139  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1149  
1150  
1151  
1152  
1153  
1154  
1155  
1156  
1157  
1158  
1159  
1159  
1160  
1161  
1162  
1163  
1164  
1165  
1166  
1167  
1168  
1169  
1169  
1170  
1171  
1172  
1173  
1174  
1175  
1176  
1177  
1178  
1179  
1179  
1180  
1181  
1182  
1183  
1184  
1185  
1186  
1187  
1188  
1189  
1189  
1190  
1191  
1192  
1193  
1194  
1195  
1196  
1197  
1198  
1199  
1199  
1200  
1201  
1202  
1203  
1204  
1205  
1206  
1207  
1208  
1209  
1209  
1210  
1211  
1212  
1213  
1214  
1215  
1216  
1217  
1218  
1219  
1219  
1220  
1221  
1222  
1223  
1224  
1225  
1226  
1227  
1228  
1229  
1229  
1230  
1231  
1232  
1233  
1234  
1235  
1236  
1237  
1238  
1239  
1239  
1240  
1241  
1242  
1243  
1244  
1245  
1246  
1247  
1248  
1249  
1249  
1250  
1251  
1252  
1253  
1254  
1255  
1256  
1257  
1258  
1259  
1259  
1260  
1261  
1262  
1263  
1264  
1265  
1266  
1267  
1268  
1269  
1269  
1270  
1271  
1272  
1273  
1274  
1275  
1276  
1277  
1278  
1279  
1279  
1280  
1281  
1282  
1283  
1284  
1285  
1286  
1287  
1288  
1289  
1289  
1290  
1291  
1292  
1293  
1294  
1295  
1296  
1297  
1298  
1299  
1299  
1300  
1301  
1302  
1303  
1304  
1305  
1306  
1307  
1308  
1309  
1309  
1310  
1311  
1312  
1313  
1314  
1315  
1316  
1317  
1318  
1319  
1319  
1320  
1321  
1322  
1323  
1324  
1325  
1326  
1327  
1328  
1329  
1329  
1330  
1331  
1332  
1333  
1334  
1335  
1336  
1337  
1338  
1339  
1339  
1340  
1341  
1342  
1343  
1344  
1345  
1346  
1347  
1348  
1349  
1349  
1350  
1351  
1352  
1353  
1354  
1355  
1356  
1357  
1358  
1359  
1359  
1360  
1361  
1362  
1363  
1364  
1365  
1366  
1367  
1368  
1369  
1369  
1370  
1371  
1372  
1373  
1374  
1375  
1376  
1377  
1378  
1379  
1379  
1380  
1381  
1382  
1383  
1384  
1385  
1386  
1387  
1388  
1389  
1389  
1390  
1391  
1392  
1393  
1394  
1395  
1396  
1397  
1398  
1399  
1399  
1400  
1401  
1402  
1403  
1404  
1405  
1406  
1407  
1408  
1409  
1409  
1410  
1411  
1412  
1413  
1414  
1415  
1416  
1417  
1418  
1419  
1419  
1420  
1421  
1422  
1423  
1424  
1425  
1426  
1427  
1428  
1429  
1429  
1430  
1431  
1432  
1433  
1434  
1435  
1436  
1437  
1438  
1439  
1439  
1440  
1441  
1442  
1443  
1444  
1445  
1446  
1447  
1448  
1449  
1449  
1450  
1451  
1452  
1453  
1454  
1455  
1456  
1457  
1458  
1459  
1459  
1460  
1461  
1462  
1463  
1464  
1465  
1466  
1467  
1468  
1469  
1469  
1470  
1471  
1472  
1473  
1474  
1475  
1476  
1477  
1478  
1479  
1479  
1480  
1481  
1482  
1483  
1484  
1485  
1486  
1487  
1488  
1489  
1489  
1490  
1491  
1492  
1493  
1494  
1495  
1496  
1497  
1498  
1499  
1499  
1500  
1501  
1502  
1503  
1504  
1505  
1506  
1507  
1508  
1509  
1509  
1510  
1511  
1512  
1513  
1514  
1515  
1516  
1517  
1518  
1519  
1519  
1520  
1521  
1522  
1523  
1524  
1525  
1526  
1527  
1528  
1529  
1529  
1530  
1531  
1532  
1533  
1534  
1535  
1536  
1537  
1538  
1539  
1539  
1540  
1541  
1542  
1543  
1544  
1545  
1546  
1547  
1548  
1549  
1549  
1550  
1551  
1552  
1553  
1554  
1555  
1556  
1557  
1558  
1559  
1559  
1560  
1561  
1562  
1563  
1564  
1565  
1566  
1567  
1568  
1569  
1569  
1570  
1571  
1572  
1573  
1574  
1575  
1576  
1577  
1578  
1579  
1579  
1580  
1581  
1582  
1583  
1584  
1585  
1586  
1587  
1588  
1589  
1589  
1590  
1591  
1592  
1593  
1594  
1595  
1596  
1597  
1598  
1599  
1599  
1600  
1601  
1602  
1603  
1604  
1605  
1606  
1607  
1608  
1609  
1609  
1610  
1611  
1612  
1613  
1614  
1615  
1616  
1617  
1618  
1619  
1619  
1620  
1621  
1622  
1623  
1624  
1625  
1626  
1627  
1628  
1629  
1629  
1630  
1631  
1632  
1633  
1634  
1635  
1636  
1637  
1638  
1639  
1639  
1640  
1641  
1642  
1643  
1644  
1645  
1646  
1647  
1648  
1649  
1649  
1650  
1651  
1652  
1653  
1654  
1655  
1656  
1657  
1658  
1659  
1659  
1660  
1661  
1662  
1663  
1664  
1665  
1666  
1667  
1668  
1669  
1669  
1670  
1671  
1672  
1673  
1674  
1675  
1676  
1677  
1678  
1679  
1679  
1680  
1681  
1682  
1683  
1684  
1685  
1686  
1687  
1688  
1689  
1689  
1690  
1691  
1692  
1693  
1694  
1695  
1696  
1697  
1698  
1699  
1699  
1700  
1701  
1702  
1703  
1704  
1705  
1706  
1707  
1708  
1709  
1709  
1710  
1711  
1712  
1713  
1714  
1715  
1716  
1717  
1718  
1719  
1719  
1720  
1721  
1722  
1723  
1724  
1725  
1726  
1727  
1728  
1729  
1729  
1730  
1731  
1732  
1733  
1734  
1735  
1736  
1737  
1738  
1739  
1739  
1740  
1741  
1742  
1743  
1744  
1745  
1746  
1747  
1748  
1749  
1749  
1750  
1751  
1752  
1753  
1754  
1755  
1756  
1757  
1758  
1759  
1759  
1760  
1761  
1762  
1763  
1764  
1765  
1766  
1767  
1768  
1769  
1769  
1770  
1771  
1772  
1773  
1774  
1775  
1776  
1777  
1778  
1779  
1779  
1780  
1781  
1782  
1783  
1784  
1785  
1786  
1787  
1788  
1789  
1789  
1790  
1791  
1792  
1793  
1794  
1795  
1796  
1797  
1798  
1799  
1799  
1800  
1801  
1802  
1803  
1804  
1805  
1806  
1807  
1808  
1809  
1809  
1810  
1811  
1812  
1813  
1814  
1815  
1816  
1817  
1818  
1819  
1819  
1820  
1821  
1822  
1823  
1824  
1825  
1826  
1827  
1828  
1829  
1829  
1830  
1831  
1832  
1833  
1834  
1835  
1836  
1837  
1838  
1839  
1839  
1840  
1841  
1842  
1843  
1844  
1845  
1846  
1847  
1848  
1849  
1849  
1850  
1851  
1852  
1853  
1854  
1855  
1856  
1857  
1858  
1859  
1859  
1860  
1861  
1862  
1863  
1864  
1865  
1866  
1867  
1868  
1869  
1869  
1870  
1871  
1872  
1873  
1874  
1875  
1876  
1877  
1878  
1879  
1879  
1880  
1881  
1882  
1883  
1884  
1885  
1886  
1887  
1888  
1889  
1889  
1890  
1891  
1892  
1893  
1894  
1895  
1896  
1897  
1898  
1899  
1899  
1900  
1901  
19

1 According to the report of investigation (“ROI”), Mr. Aramburo-Uribe was seen exiting the  
2 pedestrian line leading from the United States into Mexico and returning northbound. Officer Ballesteros  
3 believed that Mr. Aramburo-Uribe turned around and decided not to enter Mexico after observing law  
4 enforcement conducting random southbound inspections. Officer Ballesteros stopped Mr. Aramburo-Uribe  
5 after he turned around and was leaving Friendship Plaza toward the north. The ROI indicates that Officer  
6 Ballesteros asked Mr. Aramburo-Uribe for his identification, patted him down, and asked him to step aside.  
7 Officer Ballesteros did not advise Mr. Aramburo-Uribe of his rights under Miranda v. Arizona, 384 U.S. 436  
8 (1966), or that he was free to leave or refuse consent for a search. Mr. Aramburo-Uribe was ordered to  
9 produce the contents of his pockets and questioned.

10 According to the report of investigation, when asked by Officer Ballesteros where he was going,  
11 Mr. Aramburo-Uribe stated that he was going to Mexico, but that he left his phone at the Nike store.  
12 According to the report, Mr. Aramburo-Uribe appeared nervous. Officer Ballesteros asked Mr. Aramburo-  
13 Uribe why he was nervous and Mr. Aramburo-Uribe allegedly stated, “because you’re talking to me.” Officer  
14 Ballesteros claims to have asked Mr. Aramburo-Uribe if he was carrying any “money.” He further claims that  
15 Mr. Aramburo-Uribe stated that he was not carrying money. However, when asked to empty his pockets,  
16 Mr. Aramburo-Uribe produced several blank money orders. Officer Ballesteros estimated that they totaled  
17 around \$11,000. Officer Ballesteros then advised Mr. Aramburo-Uribe of the reporting requirements, which  
18 Mr. Aramburo-Uribe acknowledged. The report of investigation notes that there were no currency reporting  
19 signs posted in the WPGA.

20 Despite the fact that Mr. Aramburo-Uribe never reached the inspection area, was leaving the WPGA  
21 when stopped, and was no longer heading toward Mexico, Officer Ballesteros took Mr. Aramburo-Uribe by  
22 the arm, along with what he believed to be approximately \$11,000, to the old Imperial Beach Border Patrol  
23 Station, outside the public’s view (per the agent’s report). At the old Border Patrol Station, Mr. Aramburo-  
24 Uribe was further questioned and searched, again without the benefit of Miranda warnings.

25 Approximately five hours later, Mr. Aramburo-Uribe was contacted by three additional agents and  
26 advised of his Miranda warnings, which he invoked. Mr. Aramburo-Uribe was transported to the  
27 Metropolitan Correctional Center (“MCC”) and charged by complaint with Bulk Cash Smuggling in violation  
28 of 31 U.S.C. § 5332. An indictment was later filed charging him with Failure to File Reports on Exporting

1 Monetary Instruments in violation of 31 U.S.C. § 5316(a)(1)(A), Bulk Cash Smuggling in violation of 31  
 2 U.S.C. § 5332(a), and Criminal Forfeiture in violation of 18 U.S.C. § 982(a)(1).

3 To date, counsel for Mr. Aramburo-Uribe has received only 31 pages of discovery. Counsel has not  
 4 received a videotape of Mr. Aramburo-Uribe's statements or any written statement made by him (although  
 5 discovery indicates that he was asked to write down how much money he was carrying). Counsel has not  
 6 received any video surveillance of the area either, despite her requests for any video surveillance.

7 **II.**

8 **MOTION TO COMPEL DISCOVERY AND PRESERVE EVIDENCE**

9 Mr. Aramburo-Uribe moves for the production by the government of the following discovery and  
 10 for the preservation of evidence. This request is not limited to those items about which the prosecutor knows,  
 11 but includes all discovery listed below that is in the custody, control, care, or knowledge of any government  
 12 agency. See generally Kyles v. Whitley, 514 U.S. 419 (1995); United States v. Bryan, 868 F.2d 1032 (9th Cir.  
 13 1989). To date, the defendant has received approximately 31 pages discovery.

14 1. The Defendant's Statements. The Government must disclose to the defendant all copies of any  
 15 written or recorded statements made by the defendant; the substance of any statements made by the defendant  
 16 which the Government intends to offer in evidence at trial; any response by the defendant to interrogation;  
 17 the substance of any oral statements which the Government intends to introduce at trial and any written  
 18 summaries of the defendant's oral statements contained in the handwritten notes of the Government agent;  
 19 any response to any Miranda warnings which may have been given to the defendant; and any other statements  
 20 by the defendant. Fed. R. Crim. P. 16(a)(1)(A) and (B). The Advisory Committee Notes and the 1991  
 21 amendments to Rule 16 make clear that the Government must reveal all the defendant's statements, whether  
 22 oral or written, regardless of whether the government intends to make any use of those statements.

23 2. Arrest Reports, Notes and Dispatch Tapes. Defendant also specifically requests that all arrest  
 24 reports, notes and dispatch or any other tapes that relate to the circumstances surrounding his arrest or any  
 25 questioning, if such reports have not already been produced in their entirety, be turned over to him. This  
 26 request includes, but is not limited to, any rough notes, records, reports, transcripts or other documents in  
 27 which statements of the defendant or any other discoverable material is contained. This is all discoverable  
 28 under Fed. R. Crim. P. 16(a)(1)(A) and (B) and Brady v. Maryland, 373 U.S. 83 (1963). See also Loux v.

1   | United States, 389 F.2d 911 (9th Cir. 1968). Arrest reports, investigator's notes, memos from arresting  
 2 officers, dispatch tapes, sworn statements, and prosecution reports pertaining to the defendant are available  
 3 under Fed. R. Crim. P. 16(a)(1)(A) and (B), Fed. R. Crim. P. 26.2 and 12(I). Preservation of rough notes is  
 4 requested, whether or not the government deems them discoverable.

5       3. Brady Material. The defendant requests all documents, statements, agents' reports, and tangible  
 6 evidence favorable to the defendant on the issue of guilt and/or which affects the credibility of the  
 7 government's case. Impeachment and exculpatory evidence both fall within Brady's definition of evidence  
 8 favorable to the accused. United States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427 U.S. 97  
 9 (1976).

10      4. Any Information That May Result in a Lower Sentence. As discussed above, any information  
 11 which may result in a more favorable sentence must also be disclosed pursuant to Brady v. Maryland, 373  
 12 U.S. 83 (1963). The Government must disclose any cooperation or attempted cooperation by the defendant,  
 13 as well as any information that could affect any base offense level or specific offense characteristic under  
 14 Chapter Two of the Guidelines. Also included in this request is any information relevant to a Chapter Three  
 15 adjustment, a determination of the defendant's criminal history, or any other application of the Guidelines.

16       5. The Defendant's Prior Record. Evidence of a prior record is available under Fed. R. Crim. P.  
 17 16(a)(1)(D). Counsel specifically requests a complete copy of any criminal record.

18       6. Any Proposed 404(b) Evidence. Evidence of prior similar acts is discoverable under Fed. R.  
 19 Crim. P. 16(a)(1)(D) and Fed. R. Evid. 404(b) and 609. In addition, under Fed. R. Evid. 404(b), "upon request  
 20 of the accused, the prosecution . . . shall provide reasonable notice in advance of trial . . . of the general nature  
 21 . . . ." of any evidence the government proposes to introduce under Fed. R. Evid. 404(b) at trial. Sufficient  
 22 notice requires the government to "articulate precisely the evidential hypothesis by which a fact of  
 23 consequence may be inferred from the other acts evidence." United States v. Mehrmanesh, 689 F.2d 822, 830  
 24 (9th Cir. 1982) (emphasis added; internal citations omitted); see also United States v. Brooke, 4 F.3d 1480,  
 25 1483 (9th Cir. 1993) (reaffirming Mehrmanesh and reversing convictions).

26       This includes any "TECS" records (records of prior border crossings) that the Government intends  
 27 to introduce at trial, whether in its case-in-chief, impeachment, or rebuttal. Although there is nothing  
 28 intrinsically improper about prior border crossings, they are nonetheless subject to 404(b), as they are "other

1 acts" evidence that the government must produce before trial. United States v. Vega, 188 F.3d 1150, 1154-  
 2 1155 (9th Cir. 1999).

3 The defendant requests that such notice be given at least three weeks before trial to give the defense  
 4 time to adequately investigate and prepare for trial.

5 7. Evidence Seized. Evidence seized as a result of any search, either warrantless or with a warrant,  
 6 is discoverable under Fed. R. Crim. P. 16(a)(1)(E).

7 8. Request for Preservation of Evidence. The defense specifically requests that all dispatch tapes  
 8 or any other physical evidence that may be destroyed, lost, or otherwise put out of the possession, custody,  
 9 or care of the government and which relate to the arrest or the events leading to the arrest in this case be  
 10 preserved. This request includes, but is not limited to, the agents' rough notes, the results of any fingerprint  
 11 analysis, the defendant's personal effects, any evidence seized from the defendant or any third party, and **any**  
 12 **video surveillance of the Westside Pedestrian Gate Area (WPGA) where Mr. Aramburo-Uribe allegedly**  
 13 **got out of line and the area where he was subsequently stopped, as well video surveillance of the former**  
 14 **Imperial Beach Border Patrol Station where Mr. Aramburo-Uribe was questioned (a second time)**.  
 15 This request also includes any material or percipient witnesses who might be deported or otherwise likely to  
 16 become unavailable (e.g. undocumented aliens and transients).

17 It is requested that the prosecutor be ordered to question all the agencies and individuals involved  
 18 in the prosecution and investigation of this case to determine if such evidence exists, and if it does exist, to  
 19 inform those parties to preserve any such evidence.

20 9. Henthorn Material. The defendant requests that the Assistant United States Attorney ("AUSA")  
 21 assigned to this case oversee (not personally conduct) a review of all personnel files of each agent involved  
 22 in the present case for impeachment material. See Kyles v. Whitley, 514 U.S. 437, 438 (1995) (holding that  
 23 "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the  
 24 government's behalf in the case, including the police"); United States v. Henthorn, 931 F.2d 29 (9th Cir.  
 25 1991). This request includes, but is not limited to, any complaints filed against the agent, whether or not the  
 26 investigating authority has taken any action, as well as any matter for which a disciplinary review was  
 27 undertaken, whether or not any disciplinary action was ultimately recommended. The defendant further  
 28 requests production of any such information at least one week prior to the motion hearing and three weeks

1 prior to trial. If the prosecutor is uncertain whether certain information should be disclosed, this information  
 2 should be produced to the Court in advance of the motion hearing and the trial for an in camera inspection.

3       10. Tangible Objects. The defendant requests the opportunity to inspect, copy, and test, as  
 4 necessary, all other documents and tangible objects, including photographs, books, papers, documents, alleged  
 5 narcotics, fingerprint analyses, vehicles, or copies of portions thereof, which are material to the defense or  
 6 intended for use in the government's case-in-chief or were obtained from or belong to the defendant. Fed. R.  
 7 Crim. P. 16(a)(1)(E). Specifically, the defendant requests copies of any video surveillance of Mr. Aramburo-  
 8 Uribe, as well as the area where Mr. Aramburo-Uribe was stopped, searched, and questioned.

9       11. Expert Witnesses. The defendant requests the name, qualifications, and a written summary of  
 10 the testimony of any person that the government intends to call as an expert witness during its case in chief.  
 11 Fed. R. Crim. P. 16(a)(1)(G). This summary should include a description of the witness' opinion(s), as well  
 12 as the bases and the reasons for the opinion(s). See United States v. Duvall, 272 F.3d 825 (7th Cir. 2001)  
 13 (finding that government's written expert notice did not adequately summarize or describe police detective's  
 14 testimony in drug prosecution where notice provided only a list of the general subject matters to be covered  
 15 and failed to identify what opinion the expert would offer on those subjects). This request includes, but is not  
 16 limited to, disclosure of the qualifications of any government witness who will testify that he understands  
 17 and/or speaks Spanish or any other foreign language that may have been used during the course of an  
 18 interview with the defendant or any other witness.

19       The defense requests the notice of expert testimony be provided at a minimum of three weeks prior  
 20 to trial so that the defense can properly prepare to address and respond to this testimony, including obtaining  
 21 its own expert and/or investigating the opinions, credentials of the government's expert and obtain a hearing  
 22 in advance of trial to determine the admissibility of qualifications of any expert. See Kumho v. Carmichael  
 23 Tire Co., 526 U.S. 137, 119 S.Ct. 1167, 1176 (1999) (trial judge is "gatekeeper" and must determine,  
 24 reliability and relevancy of expert testimony).

25       12. Impeachment evidence. The defendant requests any evidence that any prospective government  
 26 witness has engaged in any criminal act whether or not resulting in a conviction and whether any witness has  
 27 made a statement favorable to the defendant. See Fed. R. Evid. 608, 609 and 613. Such evidence is  
 28 discoverable under Brady v. Maryland. See United States v. Strifler, 851 F.2d 1197 (9th Cir. 1988) (witness'

1 prior record); Thomas v. United States, 343 F.2d 49 (9th Cir. 1965) (evidence that detracts from a witness' 2 credibility).

3       13. Evidence of Criminal Investigation of Any Government Witness. The defense requests any 4 evidence that any prospective witness is under investigation by federal, state or local authorities for any 5 criminal conduct. United States v. Chitty, 760 F.2d 425 (2d Cir. 1985).

6       14. Evidence of Bias or Motive to Lie. The defense requests any evidence that any prospective 7 government witness is biased or prejudiced against the defendant, or has a motive to falsify or distort his or 8 her testimony. Pennsylvania v. Ritchie, 480 U.S. 39 (1987); United States v. Strifler, 851 F.2d 1197 (9th Cir. 9 1988).

10       15. Evidence Affecting Perception, Recollection, Ability to Communicate, or Veracity. The 11 defendant requests any evidence, including any medical or psychiatric report or evaluation, tending to show 12 that any prospective witness' ability to perceive, remember, communicate, or tell the truth is impaired; and 13 any evidence that a witness has ever used narcotics or other controlled substance, or has ever been an 14 alcoholic. United States v. Strifler, 851 F.2d 1197 (9th Cir. 1988); Chavis v. North Carolina, 637 F.2d 213, 15 224 (4th Cir. 1980).

16       16. Witness Addresses. The defense requests the name and last known address of each prospective 17 government witness. See United States v. Napue, 834 F.2d 1311 (7th Cir. 1987); United States v. Tucker, 18 716 F.2d 576 (9th Cir. 1983) (failure to interview government witnesses by counsel is ineffective); United 19 States v. Cook, 608 F.2d 1175, 1181 (9th Cir. 1979) (defense has equal right to talk to witnesses). The 20 defendant also requests the name and last known address of every witness to the crime or crimes charged (or 21 any of the overt acts committed in furtherance thereof) who will not be called as a government witness. 22 United States v. Cadet, 727 F.2d 1453 (9th Cir. 1984).

23       17. Name of Witnesses Favorable to the Defendant. The defendant requests the name of any witness 24 who made any arguably favorable statement concerning the defendant or who could not identify him or who 25 was unsure of his identity, or participation in the crime charged. Jackson v. Wainwright, 390 F.2d 288 (5th 26 Cir. 1968); Chavis v. North Carolina, 637 F.2d 213, 223 (4th Cir. 1980); Jones v. Jago, 575 F.2d 1164, 1168 27 (6th Cir. 1978); Hudson v. Blackburn, 601 F.2d 785 (5th Cir. 1979), cert. denied, 444 U.S. 1086 (1980).

28       18. Statements Relevant to the Defense. The defendant requests disclosure of any statement that

1 may be “relevant to any possible defense or contention” that he might assert. United States v. Bailleaux, 685  
 2 F.2d 1105 (9th Cir. 1982). This includes Grand Jury transcripts which are relevant to the defense’s potential  
 3 motion to dismiss the indictment.

4       19. Jencks Act Material. The defendant requests production in advance of the motion hearing or  
 5 trial of all material, including dispatch tapes, which the government must produce pursuant to the Jencks Act,  
 6 18 U.S.C. § 3500 and Fed. R. Crim. P. 26.2. A verbal acknowledgment that “rough” notes constitute an  
 7 accurate account of the witness’ interview is sufficient for the report or notes to qualify as a statement under  
 8 section 3500(e)(1). Campbell v. United States, 373 U.S. 487, 490-92 (1963); see also United States v.  
 9 Boshell, 952 F.2d 1101 (9th Cir. 1991) (holding that interview notes constitute Jencks material when an agent  
 10 reviews notes with the subject of the interview); see also United States v. Riley, 189 F.3d 802, 806-808 (9th  
 11 Cir. 1999). Advance production will avoid the possibility of delay of the motion hearing or trial to allow the  
 12 defendant to investigate the Jencks material. Defendant requests pre-trial disclosure of such statements to  
 13 avoid unnecessary recesses and delays and to allow defense counsel to prepare for, and use properly any  
 14 Jencks statements during cross-examination.

15       20. Giglio Information. Pursuant to Giglio v. United States, 405 U.S. 150 (1972), the defendant  
 16 requests all statements and/or promises, expressed or implied, made to any government witnesses, in exchange  
 17 for their testimony in this case, and all other information which could arguably be used for the impeachment  
 18 of any government witnesses.

19       21. Agreements Between the Government and Witnesses. The defendant requests discovery  
 20 regarding any express or implicit promise, understanding, offer of immunity, of past, present, or future  
 21 compensation, or any other kind of agreement or understanding, including any implicit understanding relating  
 22 to criminal or civil income tax, forfeiture or fine liability, between any prospective government witness and  
 23 the government (federal, state and/or local). This request also includes any discussion with a potential witness  
 24 about or advice concerning any immigration benefits, any contemplated prosecution, or any possible plea  
 25 bargain, even if no bargain was made or the advice not followed.

26       22. Informants and Cooperating Witnesses. The defendant requests disclosure of the names and  
 27 addresses of all informants or cooperating witnesses used or to be used in this case, and in particular,  
 28 disclosure of any informant who was a percipient witness in this case or otherwise participated in the crime

1 charged against the defendant. The government must disclose the informant's identity and location, as well  
 2 as disclose the existence of any other percipient witness unknown or unknowable to the defense. Roviaro v.  
 3 United States, 353 U.S. 52, 61-62 (1957). The government must disclose any information derived from  
 4 informants which exculpates or tends to exculpate the defendant.

5       23. Bias by Informants or Cooperating Witnesses. The defendant requests disclosure of any  
 6 information indicating bias on the part of any informant or cooperating witness. Giglio v. United States,  
 7 405 U.S. 150 (1972). Such information would include what, if any, inducements, favors, payments or threats  
 8 were made to the witness to secure cooperation with the authorities.

9       24. Personnel Records of Government Officers Involved in the Arrest. Defendant requests all citizen  
 10 complaints and other related internal affairs documents involving any of the immigration officers or other law  
 11 enforcement officers who were involved in the investigation, arrest and interrogation of Defendant. See  
 12 Pitchess v. Superior Court, 11 Cal. 3d 531, 539 (1974). Because of the sensitive nature of these documents,  
 13 defense counsel will be unable to procure them from any other source.

14       25. Training of Relevant Law Enforcement Officers. Defendant requests copies of all written,  
 15 videotaped or otherwise recorded policies or training instructions or manuals issued by all law enforcement  
 16 agencies involved in the case (Immigration and Customs Enforcement, U.S. Customs and Border Protection,  
 17 Border Patrol, Department of Homeland Security, etc.) to their employees regarding: (a) the handling of  
 18 vehicles suspected to be transporting contraband across the port of entry; (b) the referral to secondary  
 19 inspection of persons within those vehicles; (c) the detention of individuals within those vehicles; (d) the  
 20 search of those vehicles and the occupants of those vehicles, including the proper means of obtaining consent  
 21 to search and what constitutes consent to search; (e) the informing of suspects of their Constitutional rights;  
 22 (f) the questioning of suspects and witnesses. Defendant also requests all written or otherwise attainable  
 23 information regarding the training of Customs agents at ports of entry in California to detect or discover  
 24 narcotics in vehicles entering the United States, including any training offered to the law enforcement agencies  
 25 by the DEA or other law enforcement agencies or individuals.

26       26. Performance Goals and Policy Awards. Defendant requests disclosure of information regarding  
 27 standards used for measuring, compensating or reprimanding the conduct of all law enforcement officers  
 28 involved in the case (Customs, Border Patrol, ICE, etc.) to the extent such information relates to the detection

1 of contraband. This request specifically includes information concerning performance goals, policy awards,  
2 and the standards used by Customs for commending, demoting, or promoting agents for their performance  
3 at the port of entry and their success or failure to detect illegal narcotics in general.

4       27. Opportunity to View and Photograph the Contraband. Defendant hereby requests an opportunity  
5 to view and photograph the monetary instruments confiscated in this case as well as the containers in which  
6 they were allegedly found.

7 28. TECS Reports. Defendant requests all TECS reports pertaining to Defendant.

8        29. Reports of Scientific Tests or Examinations. Pursuant to Fed. R. Crim. P. 16(a)(1)(F), the  
9 defendant requests the reports of all tests and examinations conducted upon the evidence in this case.  
10 Including, but not limited to, any fingerprint testing done upon any evidence seized in this case, that is within  
11 the possession, custody, or control of the government, the existence of which is known, or by the exercise of  
12 due diligence may become known, to the attorney for the government, and which are material to the  
13 preparation of the defense or are intended for use by the government as evidence in chief at trial.

14       30. Residual Request. The defense intends by this discovery motion to invoke his rights to discovery  
15 to the fullest extent possible under the Federal Rules of Criminal Procedure and the Constitution and laws of  
16 the United States. This request specifically includes all subsections of Rule 16. The defendant requests that  
17 the government provide him and his attorney with the above requested material sufficiently in advance of trial.

III.

**MOTION TO SUPPRESS EVIDENCE UNDER THE FOURTH AMENDMENT**

20 The Fourth Amendment of the United States Constitution guarantees the right of people to be secure  
21 in their persons, houses, papers and effects against unreasonable searches and seizures. U.S. Const. Amend.  
22 IV. “Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per  
23 se unreasonable under the Fourth Amendment— subject only to a few specifically established and well-  
24 delineated exceptions.” United States v. Ross, 456 U.S. 798, 825 (1982) (citations omitted).

25 //  
26 //  
27 //  
28 //

1    **A. Officer Ballesteros Lacked Reasonable Suspicion to Stop and Detain Mr. Aramburo-Uribe As**  
 2    **He Was Leaving The Westside Pedestrian Gate Area.**

3    **1. Officer Ballesteros Stopped Mr. Aramburo-Uribe.**

4    “A seizure of the person within the meaning of the Fourth and Fourteenth Amendments occurs when,  
 5 taking into account all of the circumstances surrounding the encounter, the police conduct would have  
 6 communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his  
 7 business.” Kaupp v. Texas, 538 U.S. 626 (2003). See also Wallace v. Batavia School Dist. 101, 68 F.3d 1010  
 8 (7th Cir.1995) (where teacher momentarily grabbed student’s wrist and elbow to escort student out of  
 9 classroom in order to prevent a fight, a seizure under the Fourth Amendment took place but such seizure was  
 10 reasonable under the circumstances). Application of physical force is not required for a seizure to occur. See  
 11 California v. Hodari D., 499 U.S. 621, 625-626 (1991) (A “seizure” occurs where there is *either* an application  
 12 of physical force, even if extremely slight, or submission to the show of lawful authority); Florida v. Bostick,  
 13 501 U.S. 429, 436-437 (1991) (Seizure occurs where police conduct communicates to reasonable person that  
 14 he is not free to leave, or where person’s movement is restricted by some other factor, free to decline officers’  
 15 request or terminate the encounter).

16    In this case, Mr. Aramburo-Uribe was trying to leave the Westside Pedestrian Gate Area when he  
 17 was prevented from doing so—he was told to go over to where the office was located, he was patted down,  
 18 told to move aside, confronted by the officer with his “nervousness,” and told produce the contents of his  
 19 pockets. Under the circumstances, a reasonable person would not feel free to leave or terminate the encounter  
 20 with the officer. Thus, Mr. Aramburo-Uribe was “seized” for purposes of the Fourth Amendment when he  
 21 submitted to Officer Ballesteros’ show of authority.

22    **2. Officer Ballesteros Lacked Reasonable Suspicion to Stop Mr. Aramburo-Uribe.**

23    Reasonable suspicion requires that the officer making a stop be “aware of specific, articulable facts  
 24 which, when considered with objective and reasonable inferences, form a basis for *particularized* suspicion.”  
 25 United States v. Montero-Camargo, 208 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (emphasis added). A mere  
 26 “hunch” is insufficient to justify a such a stop. Terry v. Ohio, 392 U.S. 1, 22, 27 (1968). At a minimum,  
 27 reasonable suspicion is required to stop individuals who turn around before reaching a checkpoint. United  
 28 States v. Ogilvie, 527 F.2d 330, 331 (9<sup>th</sup> Cir. 1975) (“Because Ogilvie was not stopped at the checkpoint in

1 the ordinary course of its operations, we treat this stop as falling with the ‘roving patrol’ variety. The  
 2 minimum requirement to justify such a stop is that the Border Patrol officers possess a reasonable suspicion,  
 3 founded on specific articulable facts . . . ”).

4 Officer Ballesteros stopped Mr. Aramburo-Uribe after he turned around before reaching the  
 5 temporary inspection site at the WPGA. Therefore, reasonable suspicion, based on specific articulable facts,  
 6 is required to justify the initial stop in this case. Officer Ballesteros did not have a reasonable suspicion, based  
 7 on specific, articulable facts which, when considered with objective and reasonable inferences, formed a basis  
 8 for particularized suspicion that Mr. Aramburo-Uribe was engaged in criminal activity.

9 According to the report of investigation, Officer Ballesteros stopped Mr. Aramburo-Uribe because  
 10 he got out of the line to go into Mexico and turned around and walked northbound. Thus, Officer Ballesteros  
 11 believed that Mr. Aramburo-Uribe was trying to avoid inspection by law enforcement. However, turning  
 12 around and changing directions before a checkpoint is insufficient to establish reasonable suspicion. Ogilvie,  
 13 527 F.2d at 332 (“We hold that the proximity of the turn to the checkpoint, regardless of the legality of the  
 14 checkpoint, was not a sufficient foundation on which to rest a reasonable suspicion.”). See also Wong Sun  
 15 v. United States, 371 U.S. 471, 483, n. 10 (1963). Accordingly, this Court must suppress all evidence  
 16 obtained from the stop, questioning and search of Mr. Aramburo-Uribe. Wong Sun, 371 U.S. 484-486.

17 **B. Mr. Aramburo-Uribe’s Fourth Amendment Rights Were Violated When Officer Ballesteros  
 Seized Him Without Reasonable Suspicion or Probable Cause.**

19 “It is basic that an arrest with or without a warrant must stand upon firmer ground than mere  
 20 suspicion . . . ” Wong Sun, 371 U.S. at 479. “The history of the use, and not infrequent abuse, of the power  
 21 to arrest cautions that a relaxation of the fundamental requirements of probable cause would ‘leave  
 22 law-abiding citizens at the mercy of the officers’ whim or caprice.’” Id. The existence of probable cause  
 23 depends on “whether at that moment [the arrest was made] the facts and circumstances within [the officers’]  
 24 knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent  
 25 man in believing that the petitioner had committed or was committing an offense.” Beck v. State of Ohio,  
 26 379 U.S. 89, 91 (1964). “The history of the use, and not infrequent abuse, of the power to arrest cautions that  
 27 a relaxation of the fundamental requirements of probable cause would ‘leave law-abiding citizens at the mercy  
 28 of the officers’ whim or caprice.’” Wong Sun, 371 U.S. at 479. Even if this Court finds that the initial stop

1 of Mr. Aramburo-Uribe complied with the Fourth Amendment, his subsequent seizure was not supported by  
 2 probable cause, or even reasonable suspicion. Thus, all evidence obtained therefrom must be suppressed.  
 3 Wong Sun, 371 U.S. 471.

4 According to the report of investigation, upon being stopped, Officer Ballesteros asked  
 5 Mr. Aramburo-Uribe where he was going and he stated that he was going to Mexico. He also stated that he  
 6 left his phone at the Nike store. According to the report, Mr. Aramburo-Uribe appeared nervous. Officer  
 7 Ballesteros asked Mr. Aramburo-Uribe why he was nervous and Mr. Aramburo-Uribe allegedly stated,  
 8 “because you’re talking to me.” Officer Ballesteros claims to have asked Mr. Aramburo-Uribe if he was  
 9 carrying any “money” and Mr. Aramburo-Uribe allegedly stated that he was not carrying money. However,  
 10 when asked to empty his pockets, Mr. Aramburo-Uribe produced several blank money orders. Officer  
 11 Ballesteros estimated that they totaled around \$11,000. Officer Ballesteros then advised Mr. Aramburo-Uribe  
 12 of the reporting requirements, which Mr. Aramburo-Uribe acknowledged. The report of investigation notes  
 13 that there were no currency reporting signs posted in the WPGA.

14 Despite the fact that Mr. Aramburo-Uribe never reached the inspection area, was leaving the WPGA  
 15 when stopped, and was no longer headed toward Mexico, Officer Ballesteros physically escorted  
 16 Mr. Aramburo-Uribe to the old Imperial Beach Border Patrol Station. Officer Ballesteros may also have had  
 17 in his possession Mr. Aramburo-Uribe’s identification and what he believed to be approximately \$11,000 in  
 18 money orders. Moreover, according to Mr. Aramburo-Uribe, once inside the station, the officer told  
 19 Mr. Aramburo-Uribe—“For this, you are going to lose your visa.” The officer’s actions amounted to an arrest  
 20 for which probable cause was required. See e.g., Kaupp, 538 U.S. at 630 (involuntary transport of defendant  
 21 to police station is sufficiently like arrest to invoke traditional rule that arrests may be made only upon  
 22 probable cause); United States v. Beck, 598 F.2d 497, 501-502 (9<sup>th</sup> Cir. 1979) (holding that defendants were  
 23 arrested and not merely subjected to investigative detention where three law enforcement vehicles boxed in  
 24 taxi in which defendants were passengers and defendants were physically escorted by two agents to separate  
 25 locations where they were questioned and frisked); Commonwealth v. Bosurgi, 411 Pa. 56, 68 (Pa. 1963) (“An  
 26 arrest may be accomplished by an act that indicates an intention to take a person into custody and subjects him  
 27 to the actual control of the police officers.”).

28 //

1 In any event, Officer Ballesteros did not have either reasonable suspicion or probable cause to further  
 2 detain Mr. Aramburo-Uribe. Even if this Court were to accept Officer Ballesteros contention that he briefly  
 3 counted the money orders and estimated that they totaled \$11,000 and that Mr. Aramburo-Uribe did not  
 4 declare the money orders, Mr. Aramburo-Uribe did not have a duty to declare them at that time.  
 5 Mr. Aramburo was not leaving the United States when he was stopped by Officer Ballesteros, but rather, he  
 6 was heading north to look for his phone.

7 Although the report of investigation indicates that upon being stopped, Mr. Aramburo-Uribe was  
 8 acting nervously, a large number of people who are stopped by law enforcement act nervously. Nervousness  
 9 far from establishes probable cause. In fact, the Ninth Circuit has repeatedly held that nervousness does not  
 10 even establish reasonable suspicion. Moreno v. Baca, 400 F.3d 1152, 1168 (9th Cir. 2005) (reaffirming the  
 11 well-established principle that nervousness in a high crime area, without more, does not create reasonable  
 12 suspicion); United States v. Chavez-Valenzuela, 268 F.3d 719, 726 (9th Cir. 2001) (holding that “nervousness  
 13 alone” does not give rise to reasonable suspicion), amended by 279 F.3d 1062 (9th Cir. 2002); United States  
 14 v. Garcia-Camacho, 53 F.3d 244, 247 (9th Cir. 1995) (holding that a “surprised” and “terrified” look on the  
 15 defendant’s face when pulled over by law enforcement does not give rise to reasonable suspicion); United  
 16 States v. Rodriguez, 976 F.2d 592, 595-96 (9th Cir. 1992) (holding that the defendant’s repeated glances at  
 17 law enforcement officers through a rear-view mirror did not give rise to reasonable suspicion).

18 Thus, Mr. Aramburo-Uribe’s nervousness and alleged failure to declare the money order did not give  
 19 rise to reasonable suspicion, let alone probable cause, that he committed a crime. Therefore, this Court must  
 20 suppress all evidence obtained as a fruit of the search and seizure of Mr. Aramburo-Uribe.

21 **IV.**

22 **MOTION TO SUPPRESS STATEMENTS PURSUANT TO THE FIFTH AMENDMENT AND  
 23 COMPEL AN EVIDENTIARY HEARING**

24 Mr. Aramburo-Uribe moves to suppress any statements given in violation of Miranda v. Arizona,  
 25 384 U.S. 436 (1966). An individual who is questioned while “in custody or otherwise deprived of his freedom  
 26 of action in a significant way” must first be advised of his Miranda rights. Id., at 444. In Dickerson v. United  
 27 States, 530 U.S. 428 (2000), the Supreme Court held that Miranda warnings are not merely prophylactic;  
 28 rather, they are of constitutional magnitude. Id. at 444. (“[W]e conclude that Miranda announced a

1 constitutional rule").

2 Mr. Aramburo-Uribe was initially questioned after being frisked and ordered to step-aside. He was  
 3 also confronted with his nervousness. These facts support the conclusion that the initial interrogation was  
 4 custodial and thus should have been proceeded by Miranda warnings. Because Mr. Aramburo-Uribe was not  
 5 provided with Miranda warnings prior to this initial questioning, his statements should be suppressed  
 6 regardless of whether this Court determines that his seizure was reasonable for Fourth Amendment purposes.  
 7 See United States v. Kim, 292 F.3d 969, 976 (9<sup>th</sup> Cir. 2002) (noting that whether a person has been  
 8 unreasonably seized for Fourth Amendment purposes and whether an individual is "in custody" for Fifth  
 9 Amendment purposes are two different issues).

10 Mr. Aramburo-Uribe was again questioned, without the benefit of Miranda warnings after being  
 11 taken to the old Imperial Beach Border Patrol Station. Mr. Aramburo-Uribe was clearly in custody at that  
 12 time. Thus, his second set of statements made inside the old border patrol station and outside the public's  
 13 view must also be suppressed.

14 Alternatively, Mr. Aramburo-Uribe requests that this Court hold an evidentiary hearing to determine  
 15 the admissibility of any alleged statements. If a waiver of Miranda is alleged, the government bears the  
 16 burden of demonstrating the waiver by clear and convincing evidence. See Schell v. Witek, 218 F.3d 1017,  
 17 1023 (9th Cir. 2000) (en banc) ("[c]onstitutional rights may ordinarily be waived only if it can be established  
 18 by clear and convincing evidence that the waiver is voluntary, knowing, and intelligent") (internal quotation  
 19 marks and citations omitted). Moreover, this Court must "indulge every reasonable presumption against  
 20 waiver of fundamental constitutional rights." Id. at 1024 (internal quotation marks and citations omitted).  
 21 According, Mr. Aramburo-Uribe requests a voluntariness hearing pursuant to 18 U.S.C. § 3501 and a  
 22 Miranda hearing to determine the admissibility of any alleged statement.

23 **V.**

24 **MOTION FOR LEAVE TO FILE FURTHER MOTIONS**

25 Mr. Aramburo-Uribe has received only 31 pages of discovery. Mr. Aramburo-Uribe believes  
 26 discovery is not yet complete and respectfully requests the opportunity to file further motions as may be  
 27 necessary after reviewing additional discovery and conducting independent investigation.

28 //

1 VI.  
2

3 **CONCLUSION**  
4

5 For the foregoing reasons, Mr. Aramburo-Uribe respectfully requests that the Court grant the  
6 above motions.  
7

8 Respectfully submitted,  
9

10 /s/ Elizabeth M. Barros  
11 **ELIZABETH M. BARROS**  
12 Federal Defenders of San Diego, Inc.  
13 Attorneys for Mr. Aramburo-Uribe  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: May 19, 2008